S. B. Civil Revision Petition No.17/2007
(Ram Dayal v. Legal Representatives of Babulal)

Date of Order: :: :24-01-2007

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.S.N.Trivedi, for Petitioner.

Heard learned counsel for the petitioner.

It is worthwhile to mention the facts because of the reason that a suit was filed against one Babulal for prohibitory and mandatory injunction which was decreed by the trial Court on 17th September, 1958. According to the learned counsel for the petitioner, the trial Court granted prohibitory as well as mandatory injunction decree and thereby the trial Court directed the defendant to remove the wall in question and this direction was against the defendant Babulal. It is also provided that in case the judgment-debtor Babulal will not remove the wall in question, the decree holder will be free to remove the wall in question, at the cost of the judgment-debtor. The decree-holder sought execution of the decree dated 17th September, 1958, by submitting this execution petition after 45 years, in the year, 2003. The judgment-debtor raised objection that execution is barred by time. The Executing Court dismissed the execution petition of the decree-holder by the order dated 24th August, 2006 after holding it barred by time. Hence, this revision

petition.

Learned counsel for the petitioner submitted that the decree dated 17th September, 1958 was two-fold; one direction to the defendant to remove the wall and another allowing the plaintiff to remove the wall, in case the defendant failed to remove the wall. According to the learned counsel for the petitioner, not only this, but, for the same relief, another suit was filed and that was decreed by the trial Court on 13th December, 1996 and the First appeal against the said decree was dismissed by the First Appellate Court on 6th September, 2002 and, thereafter second apeal, by this High Court by judgment dated 21st July, 2006. According to the learned counsel for the petitioner, even if the direction against the defendant for removal of the wall cannot be enforced as it may have become barred by time, but so far as the right of the decree-holder to remove the wall when the defendant did not remove the wall, the execution is not barred.

So far as the execution of the decree of removal of wall against the defendant judgment-debtor is concerned, that became enforceable with the passing of the decree on 17th September, 1958 and decree could have been executed within a period of limitation,i.e., 12 years, whereas the execution petition has been filed after 45 years, therefore, the decree was rightly

held to be barred by limitation. So far as alternate plea, i.e., in case the defendant fails to remove the wall, then the plaintiff's right to remove the wall by executing the decree is also a decree executable immediately with the passing of the decree as he could have executed the decree forthwith for this relief also within the period of 12 years only. The decree-holder could have asked for direction against the defendant for removal of wall and in case of his failing, the plaintiff could have sought the Court's help for removal of the wall at the cost of the defendant judgment-debtor. In view of the above, this plea is also not available to the defendant.

Learned counsel for the petitioner has relied upon the judgment of the Kerala High Court delivered in the case of M.J.Simon v. Special Grade Panchayat, Athirampuzha (AIR 2001 Kerala 132), wherein the Kerala High Court held that in case of composite decree of enforcement of duties of defendants through mandatory injunction and other for restraining him from doing certain things, held that no limitation is provided for execution of the decree granting prohibitory injunction and, therefore, for execution of decree seeking relief on the basis of accrued right having foundation of prohibitory injunction, there cannot be any limitation. The proposition is virtually settled law and in case where decree for prohibitory injunction is granted,

it is only direction to defendant not to do any act mentioned in the decree and it can be enforced only when the prohibitory injunction is violated by the defendant and the limitation depends upon the violation of the decree by the defendant judgment-debtor. Till nothing happens after prohibitory injunction, the decree-holder cannot ask for any relief as the circumstances do not require any relief. But with the violation of the decree, the decree-holder gets right to enforce the decree.So far as mandatory injunction is concerned, that if not executed in time, becomes barred by time. In this case, the decree was for removal of wall which was in existence and the decree holder got the right to remove wall immediately.

So far as the right under decree of the year 1986 in nature of suit is concerned, that was not subject-matter in the execution petition which is apparent from the impugned order, therefore, I do not find any merit in the revision petition. The revision petition is dismissed.

(PRAKASH TATIA), J.

Scd.